

Vanessa R. Waldref  
United States Attorney  
Eastern District of Washington  
Richard R. Barker  
Assistant United States Attorney  
Post Office Box 1494  
Spokane, WA 99210-1494  
Telephone: (509) 353-2767

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 2:21CR00088-SMJ-1

Plaintiff,

# UNITED STATES' SENTENCING MEMORANDUM

V.

JAMES H. GALLAHER.

Defendant.

Plaintiff, the United States of America, by and through the United States Attorney for the Eastern District of Washington, Vanessa R. Waldref, and Assistant United States Attorney Richard R. Barker, respectfully submits the following sentencing memorandum. For the reasons stated below, the United States respectfully asks the Court to sentence the Defendant, James H. Gallaher, to a guidelines sentence of forty-one months' imprisonment followed by three years' supervised release.

## II. STATEMENT OF FACTS<sup>1</sup>

On June 28, 2021, Colville Tribal Police received information from Security personnel at Chief Joseph Dam about a possible weapons offense at the Dam. Tribal

<sup>1</sup> The statement of facts is drawn from the Parties' plea agreement (see ECF No. 33 § 5) and the Final PSIR (see ECF Nos. 43, ¶¶ 9-20).

1 police learned that Defendant James Gallaher was at the Dam's lower spillway  
2 parking area in a camper. Security personnel further explained that Gallaher was  
3 observed moving a pistol and AR style rifle from the camper to a white Honda.  
4 Surveillance video from the Dam further showed Gallaher carrying what appeared  
5 to be a pistol and an AR style rifle.

6 The next day, Tribal Police traveled to Chief Joseph Dam and observed the  
7 firearms inside a white Honda sedan in plain view. Tribal Police then approached  
8 the front door of the camper, which was open. Gallaher was inside along with two  
9 other people. Ultimately, Tribal Police procured search warrants for the camper and  
10 the Honda sedan. During the execution of the search warrants, ATF and Tribal Police  
11 recovered, among other things, the following firearms:

- 12 - a Ruger, model Single Six, .22LR caliber revolver, bearing serial number  
13 368026;
- 14 - a Smith & Wesson, model M&P 15-22, .22LR caliber rifle, bearing serial  
15 number DWP8467;
- 16 - a Winchester, model 70, .264 Winchester Magnum caliber rifle, bearing  
17 serial number 721650; and
- 18 - a Remington Model 700, 7mm STW caliber rifle, bearing serial number  
19 S6441319

20 The revolver and the .22LR caliber rifle were consistent with the firearms that  
21 Gallaher was seen carrying on surveillance video the day before. As discussed in  
22 greater detail below, at the time Gallaher possessed these guns, he knew he had a  
23 number of prior convictions for which the maximum penalty was greater than one  
24 year.

25 On October 12, 2021, Gallaher entered a guilty plea to the charges of Felon in  
26 Possession of a Firearm. While Gallaher initially was prepared to enter into a plea  
27  
28

1 without an agreement, the parties finalized a plea agreement that same day, and  
 2 Gallaher entered into his plea.

### 3 III. SENTENCING CALCULATIONS

4 Based on a total offense level of 19, a criminal history score of 3, and a  
 5 criminal history category of II, the government agrees with the United States  
 6 Probation Office that the advisory guideline range applicable to Defendant's case is  
 7 33-41 months' imprisonment. ECF No. 43 at ¶ 173.

### 8 IV. SENTENCING FACTORS UNDER 18 U.S.C. § 3553(a)

9 In determining the appropriate sentence, this Court should consider the factors  
 10 set forth in 18 U.S.C. § 3553(a). Based on these factors, including Gallaher's violent  
 11 criminal history, the United States requests a sentence of 41 months' imprisonment,  
 12 3 years' supervised release, and a \$100 special penalty assessment.

#### 13 A. The nature and circumstances of the offense and the history and 14 characteristics of the defendant

15 The nature and circumstances of the offense, as described in the factual  
 16 statement above coupled with Gallaher's criminal history spanning several decades,  
 17 demonstrate that a sentence of 41 months is appropriate. Gallaher has several felony  
 18 convictions, including four separate felonies in federal court. Notwithstanding his  
 19 status as a felon, Gallaher again possessed multiple firearms in June 2021. He was  
 20 bold and brazen in his possession – carrying the guns in broad daylight to his car in  
 21 a parking lot that was surveilled by video.<sup>2</sup>

---

23       <sup>2</sup> Gallaher states to the PSIR writer that he had the firearms because of their  
 24 sentimental value and did not intend to keep them. ECF No. 43 at ¶ 20. The United  
 25 States has not been able to verify this claim, but it should make little difference for  
 26 purposes of sentencing. Gallaher has a number of felony convictions, each one  
 27 precluding him from having firearms. Yet, he had 4 firearms in October 2021. In  
 28 addition, his claim appears to be inconsistent with his messages in his Facebook  
 account about obtaining a firearm:

Although Defendant's criminal history score is relatively low, he is not a stranger to the criminal justice system, and his prior criminal convictions are concerning. These convictions range from firearms offenses, assault, and homicide to sexual abuse. These prior offenses include, but are not limited to, the following:

- Firearms/Deadly Weapon Violation – February 7, 1977;
- Simple Assault – April 10, 1977, for kicking and punching his victim and inflicting bodily harm;
- Second Degree Robbery – April 11, 1978, for taking money from his victim by threatening the use of force, violence, and fear of injury;
- First Degree Reckless Burning – May 2, 1978, for starting a fire in his jail cell;
- Second Degree Assault – January 17, 1985, for assaulting his victim outside a bar with an open folding knife and cutting his victim's face and hand;

**Author** James Gallaher (Facebook: 100049138112744)

**Sent**

2020-06-04 12:14:32 UTC

**Body** I need a gun

**Author** Maddesyn Danielle (Facebook: 100001955054315)

**Sent** 2020-06-04 12:14:45 UTC

**Body** Okay well what kind

**Author** James Gallaher (Facebook: 100049138112744)

**Sent** 2020-06-04 12:15:17 UTC

**Body** Something ain't got alotta p

*See* Bates 30000007 at 3783. In July 2020, Gallaher sent additional messages about firearms:

**Author** James Gallaher (Facebook: 100049138112744)

**Sent** 2020-07-01 08:07:56 UTC

**Body** Hey beautiful know anyone with a deer gun yru

**Author** James Gallaher (Facebook: 100049138112744)

**Sent** 2020-07-01 11:52:03 UTC

**Body** I had to sell gun I need to get my bag of close out of that fucking van

*Id.* at 3452, 3737.

- December 6, 1987 – May 16, 1988, for assaulting his victim at a bar and then damaging a police vehicle after arrest;
- Theft of Government Property – May 26, 1991, for stealing salmon from a National Fish Hatchery, which was working to restore salmon runs in the Columbia River for the Confederated Tribes of the Colville Reservation;
- Abusive Sexual Contact – July 6, 1992, for the offense described in greater detail in paragraph 82 of the PSIR;
- Felon in Possession of Ammunition – June 21, 1999, for possessing ammunition shortly after an altercation in which Gallaher violently assaulted his victims, causing a torn ear, broken nose, and unconsciousness; and
- Involuntary Manslaughter – April 28, 2009, for breaking his victim's neck, killing the victim, disposing the victim's body, and instructing others to never speak about the incident.

ECF No. 43, ¶¶ 41 – 103. As Gallaher acquired this lengthy history, he repeatedly violated his parole and supervised release.

To be sure, Gallaher's life has not been easy. As a child, he was a victim and witness to domestic abuse in the home. ECF No. 43 at ¶ 123. He has poor health and abuses drugs. These challenges, while tragic in their own right, do not excuse his decisions to repeatedly engage in criminal behavior. In their totality, the nature of this offense and Gallaher's characteristics necessitate a sentence at the high end of the guidelines range.

**B. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment**

The offense is serious. It involved a Gallaher's apparent refusal to comport himself with the law, even though he has a conviction for similar conduct – unlawful possession of ammunition to go along with his other serious violent convictions. At the time of his possession, Gallaher was also abusing illegal narcotics, increasing the

1 risk that someone could have been hurt by Gallaher's possession of multiple firearms  
 2 in Summer 2021. Gallaher's brazen and repeated possession of firearms underscores  
 3 the great need for the sentence to reflect the seriousness of the offense and provide  
 4 just punishment. That Gallaher has a number of violent convictions spanning several  
 5 decades and dating back nearly fifty years further demonstrates a sentence toward  
 6 the top of the guideline range is necessary.

7 **C. The need for the sentence imposed to afford adequate deterrence to  
 8 criminal conduct and protect the public**

9 A sentence at the high end of the guideline range is necessary to deter  
 10 individuals who repeatedly commit violent offenses from possessing firearms. This  
 11 is especially true for Gallaher, whose many convictions and the lengthy punishments  
 12 imposed have not successfully deterred him from further criminal conduct.

13 **D. The need to avoid unwarranted sentence disparities among defendants  
 14 with similar records who have been found guilty of similar conduct**

15 The best way to ensure consistent sentences for similarly situated defendants  
 16 across courtrooms, districts, and the country is for courts to apply the Guidelines in  
 17 the same manner everywhere. *See United States v. Saeteurn*, 504 F.3d 1175, 1181  
 18 (9th Cir. 2007); *United States v. Parker*, 462 F.3d 273, 277 (3d Cir. 2006); *United*  
 19 *States v. Buscaino*, 437 F.3d 634, 638 (7th Cir. 2006). But diminishing sentencing  
 20 disparities “depends . . . upon judicial efforts to determine, and to base punishment  
 21 upon, the *real conduct* that underlies the crime of conviction.” *United States v.*  
 22 *Booker*, 543 U.S. 220, 250 (2005). “That determination is particularly important in  
 23 the federal system where [some] crimes . . . can encompass a vast range of very  
 24 different kinds of underlying conduct.” *Id.* at 250–51.

25 Based on the facts of this case and the seriousness of Defendant's conduct, a  
 26 high-guidelines sentence of 41 months' incarceration is appropriate and avoids  
 27 sentencing disparities. It bears repeating that Gallaher has convictions for  
 28

1 manslaughter, sexual assault, physical assault, robbery, and firearms offenses.  
2 While several of these convictions are quite old, Gallaher's offense and record  
3 warrant a sentence on the higher end of the guidelines to avoid disparities with other  
4 defendants with convictions for similar offenses.

5 **SENTENCING RECOMMENDATION**

6 The United States recommends the Court sentence James H. Gallaher to 41  
7 months' imprisonment, to be followed by 3 years' supervised release. Such a  
8 sentence adequately captures the nature and severity of Defendant's offense conduct,  
9 as well as his criminal history and acceptance of responsibility.

10  
11 DATED this 31st day of January 2022.  
12

13 Respectfully submitted,  
14

15 Vanessa R. Waldref  
United States Attorney

16 s/ Richard R. Barker

17 Richard R. Barker  
Assistant United States Attorney  
18

19  
20 I hereby certify that on January 31, 2022, I electronically filed the foregoing  
21 with the Clerk of the Court using the CM/ECF System, which will send notification  
22 of such filing counsel of record.  
23

24 s/ Richard R. Barker

25 Richard R. Barker  
Assistant United States Attorney  
26  
27  
28